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## In Pursuit of Excellence – A History of the University of Minnesota Law School, Part II: The Vance Years – A Time of Ascendancy

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# In Pursuit of Excellence—A History of the University of Minnesota Law School

## Part II: The Vance Years—A Time of Ascendancy†

Robert A. Stein\*

*The first article in this series described the first two decades of the University of Minnesota Law School as a period marked by an accommodating and cautious regime.<sup>1</sup> The next decade, in contrast, was marked by a demanding and ambitious administration whose reforms altered the face of the school at a pace that remains unparalleled in the history of the institution. The first dean, William S. Pattee, had provided a firm foundation for legal education at the University but had sometimes compromised the quality of his vision because of the exigencies of the moment. The next dean abjured compromise and erected upon the Pattee foundation an institution of excellence and durability. The school that had been academically undistinguished during its first 23 years was half-propelled and half-dragged to new and unaccustomed heights of scholarly excellence during the next eight years. These years of ascendancy were indelibly marked by the driving force of Dean William Reynolds Vance.*

### A. THE DEAN

At about the time that Dean Pattee was addressing the first class at the University of Minnesota's new Department of Law, William Reynolds Vance was attending his first lecture at Washington and Lee University as an eighteen-year-old freshman. Vance attended Washington and Lee for the next nine years, receiving his B.A. in 1892, his M.A. and Ph.D. (in English) in 1893 and 1895, and finally his LL.B. in 1897. It was there that he began his lifelong career as an educator, first teaching English and then, beginning in 1897, teaching law.<sup>2</sup> A man of amazing energy and drive, Vance became dean of the

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1. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part I: The Pattee Years—A Time of Accommodation*, 62 MINN. L. REV. 485 (1978).

2. From 1897 until his retirement in 1938, Vance left academia for only one year, serving as General Counsel of the Bureau of War Risk Insurance during World War I. See *William Reynolds Vance*, 50 YALE L.J. 195, 198 (1940) (memorials by A. Corbin, A. Gulliver, & E. Morgan).

Washington and Lee University Law School at age thirty, just three years after joining the faculty. In 1903, he moved to a professorship at George Washington University and ascended to the position of dean there in 1905. During the next five years, Vance served not only as dean at George Washington but also as secretary of the Association of American Law Schools.<sup>3</sup> Together, these posts gave him both broad exposure to national developments in legal education and experience in implementing them in his own school. These attainments, particularly his work and success with the most significant of the new developments—the casebook method of instruction—made Vance a well-known and highly respected figure. In 1910, he was elected President of the Association of American Law Schools. In the same year he became one of the young and revitalizing faculty members of the Yale Law School.<sup>4</sup>

During the same academic year in which Vance moved to Yale, George Edgar Vincent became President of the University of Minnesota. After 27 years under the competent but staid leadership of President Northrop, Vincent's arrival from the deanship of the faculties of art, literature, and science at the University of Chicago<sup>5</sup> marked, some said, the second founding of the University of Minnesota.<sup>6</sup> Vincent's efforts, rare in enthusiasm and vigor, attracted gifted and renowned educators to many of the colleges in the University, and by the works of these educators, the University as a whole was revamped, refreshed, and revitalized. Nowhere was this more evident than in the college of law.

Vincent became President of the University of Minnesota shortly before Dean Pattee's death, and, thus, the college of law was one of his first challenges and opportunities. It was clear to Vincent that the college needed more than just a new administrator; it needed a complete facelift. It was also clear that Vance, champion of the casebook method, experienced administrator, and eminent professor, was the ideal man for the job. But Vance needed persuading. Having twice suffered the frustrations and burdens of administrative responsibility, he was just beginning his work at Yale, a school that offered him virtually everything a scholar desired—a good library, intelligent students, learned colleagues, and, perhaps of most importance, time for study. Why forsake all this for the demanding job of remaking the Minnesota Law School, with its small library, reputation for poor

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3. *See id.*

4. According to Professor Arthur L. Corbin, Yale's 1910 call to Vance "was one of the many steps being taken at the time to establish the case method of instruction and to build up an improved faculty of producing scholars." *Id.* at 195.

5. *See* J. GRAY, *THE UNIVERSITY OF MINNESOTA, 1851-1951*, at 151 (1951).

6. *See id.* at 148.

scholarship, and faculty still without a single professor "really eminent for his legal ability, his legal learning, or his professional success at the bar," particularly when it had been intimated to him that when Yale's present dean retired, the deanship might be his?<sup>8</sup>

According to Vincent, "the sole thing which would interest [Vance] in the Minnesota situation would be to build up a fine law school of the best grade and to set the pace for legal education in the upper Mississippi Valley."<sup>9</sup> Indeed, it was this ideal of building, almost from scratch, a school of real excellence, not only for its own sake, but for the improvement of a profession Vance regarded so highly, that ultimately caught his imagination. At age 41, Vance apparently was not yet ready for the quiet life of a Yale scholar. Apparently, too, he felt a duty to respond to a need so powerfully felt.

Yet Vance did not leap into the challenge. Having been an administrator before, he knew that only if the President and Board of Regents were committed to him would real reform be possible. He had his price—both in salary and policy. The former was \$6000 a year.<sup>10</sup> The latter was "the opportunity to introduce the most modern methods of legal instruction and to set a high standard of teaching."<sup>11</sup> This would mean implementation of "the thorough-going case system,"<sup>12</sup> abolition of the night school,<sup>13</sup> and "a pretty free hand in reorganizing the college by the retirement of men . . . inefficient to work on the lines that [Vance] ha[d] in view."<sup>14</sup> In short, Vance wanted the Regents to commit themselves to the policies he thought necessary to achieve their common objective, a school of quality. And this, implicitly, is what they did when they appointed him dean on August 10, 1911.

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7. W. Pattee, Report of Present Situation 2 (June 2, 1896) (unpublished report presented to the University of Minnesota Board of Regents) (on file in Law School File, Comptroller's Papers 1888-1912, University of Minnesota Archives, Minneapolis, Minnesota).

8. See Letter from George E. Vincent to Regents Lind, Nelson, Butler, and Smith (July 11, 1911) [hereinafter cited as Vincent Letter (July 11, 1911)] (on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota).

9. *Id.*

10. See *New Dean of the College of Law*, MINN. ALUMNI WEEKLY, September 18, 1911, at 9. By comparison, other salaries at the University during the 1912-1913 academic year were as follows: President, \$10,000; Dean of the Dental School, \$4000; Law School Librarian, \$1400. See University of Minnesota Budget, 1912-1913, at 10, 47, 49. Prior to his death, Dean Pattee's salary had been \$4200. See Minutes of the University of Minnesota Board of Regents (May 2, 1907).

11. Vincent Letter (July 11, 1911), *supra* note 8.

12. *Id.*

13. *Id.*

14. Letter from John Lind to Pierce Butler (July 24, 1911) (on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota).

One demonstration of the commitment of the Regents and the President to Vance may be seen in his appointment as dean almost a full year before his teaching obligations ended at Yale. This meant that Vance was dean *in absentia* for his first year, able to visit Minnesota only a few times and forced to attempt leadership over an institution with which he was not in close contact.<sup>15</sup> Most often, he acquired his information and made his suggestions by letter. At least one benefit of his remote position, however, was that he was isolated to a degree from the critical reaction that greeted the many new policies he introduced.

The rationalizing principle, the foundation upon which rested the various reforms Vance demanded, was a new concept of the function and duty of a law school. During Pattee's accommodating administration, the school's primary purpose had been to offer "young men an opportunity to qualify for the profession of law and thereby to earn a livelihood."<sup>16</sup> Dean Vance, however, made it clear in his opening address in the fall of 1911 that henceforth the school's purpose would be far broader and deeper.<sup>17</sup> For him, it was the state's interest in a highly qualified and competent bar, rather than the individual's interest in qualifying for a profession, that justified state support of a school. The obligation of the law school was to society, and it was fulfilled by training a "relatively small and select body of young men—selected because of their moral and intellectual fitness—for efficient service to the state at the bar, on the bench, and in the legislature."<sup>18</sup> Obligations of the school to its applicants and students were only derivatives of this primary obligation. In fact, undue emphasis on the individual's interests in pursuing the legal profession was antithetical to the true purpose of the school because it fostered, at the expense of the state, an overabundance of lawyers. The experience of the eastern states had demonstrated that too many lawyers created a competitive environment in which the "superfluous lawyers, being of inferior capacity and training, are strongly tempted to secure an illegitimate livelihood by unprofessional practices."<sup>19</sup>

Thus, Vance was "glad to see in the diminishing numbers of matriculates in the law school, some evidence that possibly the less

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15. See *Minnesota Daily*, Sept. 22, 1911, at 1, col. 1.

16. *Abstract of Dean Vance's Opening Address*, MINN. ALUMNI WEEKLY, October 2, 1911, at 5 [hereinafter cited as *Vance's Opening Address*].

17. See *id.*

18. *A Statement from Dean Vance*, MINN. ALUMNI WEEKLY, December 11, 1911, at 12 [hereinafter cited as *Vance Statement*].

19. *Vance's Opening Address*, *supra* note 16, at 5.

well fitted young men [were] turning aside from the law into other callings for which they may be well suited.' ”<sup>20</sup> It was his hope

“that the work of the law school of the University of Minnesota in the future even more than in the past will be of such a character that it will contribute to the profession of law, no ‘ambulance chasers’ or others that prostitute their profession to unlawful practices, but only those who hold the law in honor and appreciate the great truth that when admitted to the bar, they become charged with the high duty of administering the law in justice and righteousness.”<sup>21</sup>

The changes made by Vance to fulfill the altered concept of the law school’s function were pervasive. The status of the night courses, the composition of the faculty, the required standard of academic performance, the method of instruction, the number of hours of instruction, the courses offered, and the attitude of both the students and the faculty were significantly altered during the first five years of Vance’s administration. And for each change there were reactions and ramifications that affected every element of the school.

## B. THE NIGHT LAW SCHOOL

The biggest and most controversial change was the abolition of the night law school. From the time of Vance’s earliest study of the University, this had been one of his primary objectives.<sup>22</sup> Reasoning from the principle that “a cheaper standard of value will drive out a dearer one,”<sup>23</sup> Vance had concluded that it would be impossible for the day course to compete with a night course that proved easier or less time-consuming. A report written near the beginning of Vance’s tenure disclosed that in 1911 the three-year day course required about 1000 classroom hours while the four-year night course required only 700.<sup>24</sup> This disparity threatened to become particularly damaging to the day school when the faculty and Regents of the University implemented a plan to extend the day course to the standard of the best American law schools—about 1200 lecture hours.<sup>25</sup> An attempt to put the night school on an equal basis would have required a six-year course of study, impractical by any standard. Leaving the night school’s requirements as they were, however, would have offered within the same institution the choice of either an easy or a difficult

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20. *Id.*

21. *Id.*

22. See Vincent Letter (July 11, 1911), *supra* note 8.

23. *Vance Statement*, *supra* note 18, at 13.

24. See The Night Law School of the University of Minnesota 2-3 (n.d.) [hereinafter cited as Night Law School] (unpublished report on file at MINNESOTA LAW REVIEW).

25. See *id.* at 3.

path to the same degree, with the same privilege, automatic admission to the bar, for each.<sup>26</sup> As Vance observed, "[e]ven good students will seek a desired degree along the line of least resistance."<sup>27</sup> Thus, if the night school had remained in operation, the improvements Vance envisioned would have been difficult, if not impossible, to effectuate.

To further buttress his attack on the night school, Vance pointedly contrasted the policies of the schools that Minnesota was trying to emulate with Minnesota's double standard for day and night students. He pointed out that "all of the law schools of the United States that aspire to a high grade of efficiency and to render a real public service, with the single exception of that of the University of Minnesota, have reached the conclusion that it is unwise to attempt to give night courses."<sup>28</sup> In Vance's mind, this fact alone raised "a very strong presumption against the Minnesota practice."<sup>29</sup> The presumption became nearly irrebuttable upon examination of the Minnesota Law School's own experience, particularly during the period between 1895 and 1907, when its day and night courses both were three years in length, but the day course required 900 hours and the night school required only 600.<sup>30</sup> According to a report on the night school, the results in Minnesota had been twofold. First, the more mature and ambitious students, attracted by an opportunity to earn money as they went to school, attended the night school. As a result, the night school was scholastically superior, even though fewer hours were required. Second, the night classes "steadily gained in numbers over the day classes, until in one year, 1896-97, there were 239 night students as compared with 195 day students."<sup>31</sup> In short, Minnesota's own history demonstrated that a more demanding day course could not compete with an easier night course. Therefore, if radical improvements were to succeed in the day course, the competing night course had to be eliminated.

No one likes to see his alma mater eliminated—particularly when it is disparaged in the process. Thus, it was not surprising that the proposal to eliminate the night law school was hotly disputed by night school alumni. Protest surfaced in letters to the Editor of the *Minnesota Alumni Weekly*,<sup>32</sup> in the Report of the Board of Visitors

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26. *See id.*

27. *Vance Statement*, *supra* note 18, at 13.

28. *Id.* at 12.

29. *Id.*

30. *See Night Law School*, *supra* note 24, at 2.

31. *Id.* The arithmetic of the author of the report was faulty. In fact, there were only 139 night students in 1896-1897. *See UNIVERSITY OF MINNESOTA COLLEGE OF LAW CIRCULAR OF INFORMATION, 1897-1898*, at 21-23.

32. *See, e.g., Protests Against Proposed Discontinuance of Night Law Course*,

of Law Alumni,<sup>33</sup> and in letters to Dean Vance.<sup>34</sup> The chief argument against the closing was an egalitarian one. Poor but ambitious young men should be allowed an opportunity to work their way through law school; limiting state-subsidized legal education to a day course would effectively allow access to state-subsidized legal education only to the rich. Thus the course proposed by Vance and the Regents was "undemocratic" and contrary to the principle of the University's founders that a school paid for by state taxpayers should be available to the "largest number of students; in fact . . . all who wish to take advantage of its courses."<sup>35</sup>

Night school supporters also disputed the wisdom of restructuring the law school and "creating for the bar of this state only brilliant men with the best of education."<sup>36</sup> They responded that "our great western institution is not quite ripe for this idea . . . [H]ere in this broad west, where we have a tremendous influx of new American citizenship, where the second generation is scarcely ripe for education at our universities, we must have a broader view."<sup>37</sup>

They also argued that the opposition directed at the night school based on its scholarship record was misplaced, since it was in the day school that scholarship was most shoddy. "Of course," wrote alumnus C.R. Wright, "I realize . . . that [the law] college was the snap course of the U. that it was the favorite course of the man who came to the U. to play football, or to have a good time. . . . Lots of half baked lawyers were turned out, but not from the night courses."<sup>38</sup> In fact, this was true because, as Vance had admitted, the most ambitious and industrious students consistently chose the night school.

In the dialogue between those for and against the abolition of the night school, the purpose of a state-supported law school was the central issue. Was the school's function to provide a legal education as conveniently as possible to all who desired it or to provide an excellent education only to as many lawyers as were needed by the state? In the end, it was the latter position—Dean Vance's position—that prevailed. The obligation of the school ran to the state and not the student, and by June 1912, no night school degrees were

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MINN. ALUMNI WEEKLY, October 23, 1911, at 67.

33. See Report of Board of Visitors of Law Alumni (June 1, 1912) (unpublished report on file in Law School Night Classes File, President's Papers 1912-1918, University of Minnesota Archives, Minneapolis, Minnesota).

34. See, e.g., Letter from C.R. Wright to Dean Vance (n.d.) [hereinafter cited as Wright Letter] (on file in Law School Night Classes File, President's Papers 1912-1918, University of Minnesota Archives, Minneapolis, Minnesota).

35. Report of Board of Visitors of Law Alumni, *supra* note 33.

36. *Id.*

37. *Id.*

38. Wright Letter, *supra* note 34.



offered for those who had not already completed two years of the night school program.<sup>39</sup>

This major change in the University Law School was not, however, achieved without a significant set of compromises. First, under a program of the University's extension office, night classes in all of the substantive areas of the law were still offered in the law building and by the law faculty. This practice was designed to accommodate the majority of night students who were studying the law for business purposes only and not in order to practice. Second, for those night students who actually were seeking admission to the bar, a fourth year of day courses in the procedural aspects of the law was offered to prepare them for the bar exam. Finally, if a night student received a grade of "good" on each night class exam, he gained admittance to the day school exam of the same subject and earned credit for it if he passed. If a night student used this method to secure credit for all the required courses of the day course, he could earn his degree<sup>40</sup> and, thus, automatic admission to the bar.

Although the provisions of this compromise undoubtedly were unappealing to the would-be night student, the administration would yield no further. In fact, Dean Vance worried that the compromise went too far. Informed of it while still at Yale, he seemed particularly disappointed that the law faculty would still be involved in teaching the night course: "Undermanned even for normal conditions, it will not be reasonable to expect other than inferior work of a faculty burdened with night teaching. In short, this unfortunate necessity will seriously delay our get-away. I am sorry, for we have far to go."<sup>41</sup>

Perhaps one reason for the compromise, and certainly a factor in the discussion of the fate of the night law school, was the existence of an independent competitor. The St. Paul College of Law<sup>42</sup> began operating as a night law school in 1900.<sup>43</sup> In 1901, the Minnesota Legislature amended its bar admission statute to exempt from examination not only University graduates but also graduates of any law school that offered a three-year course under a faculty of at least ten instructors who had the written approval of the Minnesota Supreme Court.<sup>44</sup> The course of study at the St. Paul College of Law was

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39. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1912-1913, at 16 (1912).

40. See Night Law School, *supra* note 24, at 4.

41. Letter from Dean Vance to George E. Vincent (May 18, 1912) (on file in Law School Night Classes File, President's Papers 1912-1918, University of Minnesota Archives, Minneapolis, Minnesota).

42. It became the William Mitchell College of Law in 1956. See note 57 *infra*.

43. See WILLIAM MITCHELL COLLEGE OF LAW BULLETIN, 1974-1975, at 5.

44. Act of Mar. 28, 1901, ch. 100, § 1, 1901 Minn. Gen. Laws 106 (amended 1917) (1917 amendment eliminated the "diploma privilege" for all students matriculating after April 17, 1917).

comparable to that at the University and attracted a considerable student body. It was obvious that if the St. Paul College of Law offered an easier night route to bar admission as an alternative to the University's more difficult day course, the closing of the University's night school might simply aid the St. Paul College of Law, not the University's day school.

In recognition of this fact, the Regents and President Vincent began to negotiate with Mr. Clarence W. Halbert, Secretary of the St. Paul College of Law, about a possible merger of the two schools while Vance was still at Yale.<sup>45</sup> Unfortunately for the University, the St. Paul school was in a very good bargaining position. With the University already committed to the development of a more arduous course for its degree and to the dismantling of its night school, Halbert knew that there would be a substantial increase in student interest in his school—particularly because of the bar exam exemption.

The negotiations originally looked to a possible coalition, with the St. Paul College of Law functioning as the night branch of the University. In successive letters to Vincent, however, Dean Vance made clear that he wanted to eliminate entirely night classes sanctioned by the University. "Control of the Saint Paul College of Law is very much to be desired," he wrote,

but I am convinced . . . that the University would pay too high a price for such control in committing itself to a permanent policy of maintaining a cheaper night course leading to the bar in competition with the regular day course in the Law School. The Law School might reasonably hope to overcome, to a large extent, the competition of a cheap private night school, but no such hope could be entertained as to the competition of such a school maintained by the University.<sup>46</sup>

Nevertheless, negotiations continued, and an agreement was almost achieved when Halbert's personal problems proved to be a stumbling block. Representatives of each school were close to completing an arrangement giving the University control of the St. Paul College of Law (which apparently was to be operated as an extension school) and giving Halbert a position on the University staff as director of the new extension division. When the University offered Halbert an annual salary of \$4000, however, he countered with a request for assistance from the Regents in obtaining a loan to satisfy his personal debts.<sup>47</sup> But Vincent and the Regents were unable or unwill-

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45. See generally notes 46-51 *infra* and accompanying text.

46. Letter from Dean Vance to George E. Vincent (Mar. 11, 1912) (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

47. See Letter from C.W. Halbert to George E. Vincent (May 13, 1912) (on file

ing to assist him.<sup>48</sup> Their refusal, coupled with Halbert's estimate that the increased St. Paul enrollment would provide him with a substantially higher income during the 1912-1913 academic year, caused Halbert to decline the University's employment offer.<sup>49</sup> Shortly thereafter, Halbert joined a faction at the St. Paul College opposing consolidation,<sup>50</sup> and the negotiations were temporarily discontinued.<sup>51</sup>

Perhaps the more fundamental, though unstated, impediment, both to these negotiations and to other attempts to unify legal education in the state, was the continuance of the statutory bar exam exemption for the graduates of all approved Minnesota law schools. Dean Vance recognized that the exemption strongly contributed to the attractiveness of both night schools and campaigned for its repeal almost from the time of his first visit to the state.<sup>52</sup> He pointed out that the original purpose of the exemption was to induce aspiring lawyers to take their training in law schools instead of law offices.<sup>53</sup> Since the importance of a law school education was generally recognized by Vance's time, he argued that such an inducement was no longer necessary and, in fact, had the negative effect of protecting the competitive positions of poorer schools. As early as 1895, the American Bar Association had disapproved of the exemption, and the Association of American Law Schools had followed suit.<sup>54</sup> Had the legislature repealed the exemption, negotiations between the University and the St. Paul College of Law might have succeeded. As it was, negotiations continued uneventfully, and within a few years, the Board of Regents concluded that further effort would be fruitless unless the law was changed.<sup>55</sup>

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in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

48. See Letter from George E. Vincent to C.W. Halbert (June 5, 1912) (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

49. See Letter from Pierce Butler to George E. Vincent (May 13, 1912) (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

50. See Letter from George E. Vincent to Dean Vance (June 24, 1912) [hereinafter cited as Vincent Letter (June 24, 1912)] (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

51. See Letter from G.L. Bunn to George E. Vincent (July 14, 1912) (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

52. See *Minnesota Daily*, Sept. 28, 1911, at 2, col. 1.

53. See *id.*, Feb. 6, 1915, at 8, col. 1.

54. See *id.*

55. See Letter from George E. Vincent to F.B. Tiffany (Dec. 18, 1916) (on file in St. Paul Law College File, President's Papers 1912-1916, University of Minnesota

It is unclear why the legislature resisted efforts to terminate the statutory exemption. It seems likely that some legislators saw repeal as inextricably linked to the fight over the night law schools and therefore opposed it as undemocratic. Some undoubtedly had enjoyed the benefits of night law school and the exemption themselves and saw efforts to repeal the exemption as a challenge to the quality of their academic credentials. Finally, it is almost always more difficult to generate legislative enthusiasm for a measure that denies benefits to constituents than for one that confers benefits upon them.

Whatever the reasons, resistance was strong. Even in 1915, when the reform proposal had the support of the Minnesota State Bar Association and the faculties of both the University of Minnesota and the St. Paul College of Law,<sup>56</sup> repeal was not forthcoming. By that time, the exemption and the changes at the University had contributed to the birth and growth of two new law schools and, thus, two new factions in the controversy—the Minneapolis College of Law, founded in 1912, and the Minnesota College of Law, founded in 1913.<sup>57</sup> It was not until 1917 that students entering law school were no longer afforded the exemption.<sup>58</sup>

### C. THE FACULTY

Although the abolishment of the night law school was vitally important to Vance's plans for the school, his work in recruiting a faculty was even more important. The Dean made it clear that an improvement in the quality of the faculty was essential to the goals he had established for the University of Minnesota Law School. "[W]e must not blink the unpleasant fact," he wrote to Vincent, "that we now have in the Law School a painfully weak faculty, with which we cannot afford to take any risks."<sup>59</sup> Vincent agreed with this assessment.<sup>60</sup>

Their solution was to attract nationally recognized scholars as full-time professors by offering them reduced classroom assignments

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Archives, Minneapolis, Minnesota).

56. See *Minnesota Daily*, Feb. 6, 1915, at 8, col. 1.

57. See *WILLIAM MITCHELL COLLEGE OF LAW BULLETIN*, 1974-1975, at 5. These schools later consolidated into the Minneapolis-Minnesota College of Law, which in 1956 merged with the St. Paul College of Law to become the William Mitchell College of Law. See *id.*

58. See Act of Apr. 17, 1917, ch. 282, § 2, 1917 Minn. Laws 419.

59. Letter from Dean Vance to George E. Vincent (Feb. 26, 1912) (on file in President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

60. In a letter discussing a proposal to cut the classroom hours of the school's professors, Vincent stated, "[T]he men of the old regime might just as well retain the number of hours they have become accustomed to. I doubt whether they will do good work with other hours . . ." Vincent Letter (June 24, 1912), *supra* note 50.

that would free them to pursue research and writing in their fields of expertise. For the first time, professors would be selected from a national pool instead of a local one. For the first time, a premium would be placed on the quality of the applicants' academic training and their performance as scholars. And for the first time, the problem of expense, which had frustrated a similar proposal made by Pattee fifteen years earlier,<sup>61</sup> would be at least partially solved, since in seeking out Dean Vance and inducing him to accept the Minnesota position, the Board of Regents had committed themselves to paying for professors of national stature.

The question remained of just who these faculty members would be. While at George Washington University, Vance had worked alongside two scholars with whom he very much wanted to work again. The first was Edward Sampson Thurston, a professor of contracts. Trained at Harvard Law School, Thurston practiced for five years in New York City before going to the Indiana University Law School to begin his long career as a teacher. After one year at Indiana, he joined the faculty of George Washington, remaining there until 1910, when he moved to the University of Illinois.<sup>62</sup> One year later, encouraged by Dean Vance, he came to the University of Minnesota. Vance hoped that Thurston would be appointed acting dean until his own commitment at Yale ended,<sup>63</sup> reasoning that in a Minnesota faculty both skeptical and apprehensive about coming changes, Thurston would be invaluable as an advocate of the new casebook method<sup>64</sup> and as a loyal personal supporter of Vance. Professor Paige, however, ultimately was appointed acting dean. Nevertheless, Thurston's impact was strong, both because of his example and because of his position on the Executive Committee, which administered the school until Vance's arrival in 1912. Years later, students remembered Professor Thurston as one who could really "make you squirm."<sup>65</sup> He should also be remembered as the school's first highly educated professor.

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61. See W. Pattee, *supra* note 7.

62. See ASSOCIATION OF AMERICAN LAW SCHOOLS, [1923] DIRECTORY OF TEACHERS IN MEMBER SCHOOLS 55 (1924).

63. See Letter from John Lind to Pierce Butler (Aug. 15, 1911) (on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota).

64. Professor Fletcher remarked about the case method, "[T]he system has been successful in other colleges, but I am not yet prepared to say how it will work out here." *Minnesota Daily*, Sept. 21, 1911, at 2, col. 4. Professor Thurston, on the other hand, was quoted as being "heartily in sympathy with it." *Id.*

65. Letter from Henry W. Haverstock to Dean Robert Grabb (Mar. 11, 1976), in *Reminiscences of Alumni Who Graduated 50 Years or More Ago from the University of Minnesota Law School* (1976) [hereinafter cited as *Reminiscences*] (on file at University of Minnesota Law School Library, Minneapolis, Minnesota).

The second man Dean Vance desired to attract to Minnesota was Ernest Gustav Lorenzen. Lorenzen, who succeeded Vance as dean at George Washington and then took a professorship at the University of Wisconsin, had emigrated from Germany to the United States in 1892. He received his LL.B. from Cornell University seven years later and then returned to Europe for postgraduate education at universities in Paris, Heidelberg, and Göttingen.<sup>66</sup> In 1912 Vance urged his appointment to the Minnesota faculty, stating that he considered Lorenzen to be one of the country's ten best law teachers and predicting that by the time Lorenzen was fifty, he would be "recognized as the first scholar of his day in Anglo-American law."<sup>67</sup> Although "the Harvard people regard[ed] him as a scholarly German sadly tinctured with Continentalism—as opposed to the sacrosanct Common Law"<sup>68</sup> and a Yale professor had opposed his appointment to that faculty on the ground that Lorenzen's position on a particular legal doctrine was "not only heretical but logically indefensible,"<sup>69</sup> Vance was more than confident of his scholarship, characterizing him as "a vigorous and picturesque personality, . . . a forceful and inspiring teacher, and a tireless and enthusiastic investigator."<sup>70</sup>

Vance's tributes paid off, and Lorenzen was hired away from Wisconsin in 1914. Thus, a reunion of the three George Washington professors was held in Minnesota. Their teaching skills and philosophies had evolved together. Now Minnesota students would receive the benefits of their instruction. Each of these distinguished and demanding scholars developed a reputation for discipline, toughness, and competence not only in the classroom, but in his personal life. Lorenzen, in particular, acquired the image of a thorough and indefatigable scholar, as the following anecdote illustrates:

After many years of bachelorhood Lorenzen took a wife in Minnesota, and it was shortly after this event that a colleague met him on the steps of the Law building at the close of the day. Lorenzen carried on his long, sturdy arm a green bag of the kind that used to be the distinguishing mark of the professor, and this was distended to its ultimate capacity with works of reference.

"Gus," the colleague exclaimed. "It's six o'clock. You are going to be back here the first thing in the morning. All those books! Just for tonight!"

"And every night," Lorenzen responded solemnly. Then his eye

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66. See *WHO'S WHO IN AMERICAN JURISPRUDENCE* 406 (1925).

67. Letter from Dean Vance to George E. Vincent (Jan. 22, 1912) [hereinafter cited as Vance Letter (Jan. 22, 1912)] (on file in President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

68. *Id.*

69. *Id.*

70. *Id.*

brightened with a rare display of tenderness. "This year," he added, "in honor of my wife I do not work Sundays."<sup>71</sup>

Thurston and Lorenzen were sure bets; Vance knew that they would be the kind of professor-scholars he needed to remake the school. But with other selections for the faculty, there was an element of chance, which Vance feared. His fear was heightened when he learned that one of his first appointments, a Minnesota man trained at Harvard and hired to join Thurston during that difficult first year, had proved unsatisfactory. Through the student grapevine Vance learned that the new man showed neither "knowledge [n]or ability" in the classroom and that, in the students' words, he had "classed up with the old bunch."<sup>72</sup> Two years later that professor was gone. But Vance's fear remained.

In view of this fear, it is ironic that the most acclaimed of Vance's faculty members came from the ranks of these unproven individuals. Edmund Morris Morgan had studied law at Harvard. He was practicing in Duluth when Vance became dean and was considered enough of a local man to appease those who felt that Vance was bringing too much east coast snobbishness to the law school. Even though Morgan's work at Harvard and in Duluth showed promise, Vance was reluctant to hire him, feeling that it would be an experiment undertaken at a time when the faculty was "too weak to risk experimentation."<sup>73</sup> Local interest prevailed, however, and Morgan began his brilliant and lengthy career as an educator by coming to the Minnesota Law School in 1912.

Although he was not experienced as a teacher, Morgan fit precisely into the professorial mold idealized by Vance. Exacting and knowledgeable, he asked for and received a great deal from his students. In fact, he and Lorenzen soon were engaged in a battle over how much of the students' time their respective courses merited: each felt that his subject deserved the closest attention a student could give, and neither liked to recognize the competing claims of other classes.<sup>74</sup> The students probably were less observers than victims in this competition between the "spare little man"<sup>75</sup> from Duluth and the large, solid scholar from Germany, but their teachers' interplay undoubtedly was scholastically invigorating.

Vance's improvements in the teaching faculty did much to improve the academic environment in the school. But, from the perspec-

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71. J. GRAY, *supra* note 5, at 161.

72. Vance Letter (Jan 22, 1912), *supra* note 67.

73. *Id.*

74. See J. GRAY, *supra* note 5, at 162.

75. Letter from Q.H. Hale to Dean Robert Grabb (Mar. 25, 1976), in *Reminiscences*, *supra* note 65 [hereinafter cited as Hale Letter].

tive of the long-term development of the school, the most important faculty addition was that of Arthur C. Pulling as librarian. When Pulling arrived from his position as assistant librarian at Harvard, he found a small, 17,000-volume library, poorly organized and with a poorly selected collection of reports and textbooks.<sup>76</sup> During his thirty years at Minnesota, he used a comparatively small acquisition fund to transform the library into the fifth largest law school collection and the second best research facility for Anglo-American law.<sup>77</sup> Though always alert for a bargain wherever and in whatever area it might be found, Pulling generally operated by systematically developing and redeveloping acquisition plans designed to secure only volumes of lasting and increasing value, rather than temporary convenience. His first objective was to complete the various fragmentary sets of state reports and periodicals already in the library. Once this goal was met, he formulated another, always tailoring his new program to the budget available. A favorite tactic was to solicit a gift of some material already in the library and, by a clever trade, to convert it into volumes completing a much needed new set—all without spending a single budgeted dime. Pulling acquired other collections by simply asking for free publications or retrieving what his faculty colleagues considered only waste paper.<sup>78</sup> This success without expenditure made all the more credible and successful Pulling's special requests for funds to purchase particular collections offered at what he considered reasonable prices. Professor Edward S. Bade, Pulling's successor at Minnesota, stated, "[Pulling] was an amazing buyer. While [at Minnesota] he spent thousands on the library. But when he left, its value was appraised at several million dollars." <sup>79</sup> Though the faculty, students, and buildings of the law school have changed, the tremendous resource Pulling created in the law library has remained a pillar of quality throughout the school's history.

The arrival of Vance, Thurston, Lorenzen, Morgan, and Pulling had significant effects on the old-guard faculty. One was to provide a ready standard for comparison so that the students themselves could identify the weak professors. Years later one student recalled seeking out Vance to complain about the deficiencies of a particular teacher:

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76. See *American Association of Law Libraries: Proceedings—Thirtieth Annual Meeting, Denver, Colorado*, 28 LAW LIB. J. 81, 169 (1935) (remarks of Arthur C. Pulling).

77. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1940-1942, at 90 (1943); Morgan, *Arthur Clement Pulling, Director of the Harvard Law Library*, HARV. L. SCH. BULL., October 1953, at 8.

78. See Morgan, *supra* note 77, at 8.

79. *Id.*



[Vance] apologized to me and said he confidentially agreed with me but this man was one (he said) he had inherited and for some reason he felt he had to carry him on. He definitely knew he had a poor teacher in his faculty and hoped eventually to replace him.<sup>80</sup>

Undoubtedly some of the old guard, feeling out of place in the new school, simply left. Others received offers to go elsewhere that the new administration did not attempt to meet.<sup>81</sup> Still others felt the subtle but effective pressure of disparities in salary between themselves and the newcomers.<sup>82</sup> The net result was that by 1914 the only survivors of the old regime were James Paige and Henry Fletcher. Though of lesser stature than the new men, Paige and Fletcher nonetheless were good professors whose personalities had become woven into, and unseverable from, the fabric of the school by the time Vance arrived.

#### D. THE STUDENTS

The advent of the new faculty had its most direct effect upon the students of the school. The most pronounced change was the different expectations that these teachers brought to the classroom. Suddenly, students were expected to be scholars, devoted and diligent. The law would not be spoon-fed to them; it would be discovered through rigorous intellectual processes. No longer could students skimp on their classwork and still get by. Their sins of academic omission would convert a class period into an hour-long hell. The tradition of the law school snap course was at an end.

A poem published in the Law Section of the 1913 *Gopher* underscored this transition:

Before and After  
"The Law course is an easy one,"  
Is what they used to say;  
But if the critics were here now,  
They would think a different way.  
No longer does the care-free stude  
Play cards and sing and dance.  
But now they're plugging night and day,  
Since the advent of Dean Vance.

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80. Hale Letter, *supra* note 75.

81. See Letter from Dean Vance to Everett Fraser (Mar. 26, 1915) (on file in Everett Fraser Papers, University of Minnesota Archives, Minneapolis, Minnesota).

82. In 1919 Fletcher and Paige were still being paid \$4750 a year, see Letter from Marion L. Burton to Regents Butler, Snyder, and Sommers (May 28, 1919) (on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota), while Lorenzen and Morgan were receiving \$5000 a year as early as 1916, see Letter from Dean Vance to Regent Snyder (Jan. 26, 1917) [hereinafter cited as Vance Letter (Jan. 26, 1917)] (on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota).

They don't shake dice at Louie's now,  
Nor gamble on the races;  
You'll find them in the library,  
Always reading cases.<sup>83</sup>

Despite the humor, the transition was far from easy. Dean Vance addressed the problem in a 1913 report to the University President. "It is to be feared," he wrote, "that law students in this University have not heretofore taken their professional studies with sufficient seriousness. They appear to have regarded the work of the Law School as requiring only half time of a serious-minded person."<sup>84</sup> This observation was borne out by the large number of students who either were on probationary status or had failed in their examinations, although Vance reported that "almost without exception the students accepted their failures manfully, and manifested a determination to recoup their misfortunes by greater industry in the future."<sup>85</sup>

The cause of the law school's academic growing pains, however, went deeper than the students' lack of industry. Another facet of the problem was that classes still contained many students who did not meet the new admissions requirement of two years of college training and who were attending as special students. These students were merely unobtrusive when the school's classes were little more than lectures. But their lack of contribution to the Socratic dialogue used by the new faculty was a source of great distress. In line with his fear of an overpopulated, undereducated bar, Dean Vance was convinced that he was doing the state a disservice by continuing to educate special students who generally would not meet his high ideal of a lawyer.

Thus, the elimination of the special student population emerged as one of Vance's earliest goals. One of the faculty regulations adopted for the fall of 1912 excluded from consideration for admission any special student applicant under 21 years of age.<sup>86</sup> And in a yearly report to the President, the Dean included tables designed to make it "perfectly manifest that, as a group, [the special students] can not keep the pace."<sup>87</sup> Yet, throughout Vance's administration, the percentage of special students in the entering class never dropped below 25%.<sup>88</sup> Not until the year after Vance resigned was it announced that

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83. THE GOPHER (1913) (unpaginated) (University of Minnesota student year-book).

84. Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT: 1912-1913, at 64-65 (1914).

85. *Id.* at 65.

86. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1912-1913, at 9 (1912).

87. Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT: 1914-1915, at 65 (1916).

88. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1920-1921, at 131, 132 (1922).

the faculty had "definitely adopted the policy of scrutinizing very carefully the qualifications of these applicants . . . . The tendency is to admit only those who can give evidence of superior natural ability."<sup>89</sup>

Another facet of the problem caused by the new rigorous academic standards was the difficulty they presented for those students who had to or wanted to hold down a job. When the night school course was available, and when even the day course was thought to require only "half time of a serious-minded person,"<sup>90</sup> law students were able to earn their way through school without difficulty. After the advent of Dean Vance, however, there was no time for outside work. As Vance put it, "the student who can not give substantially all of his time to his work in the Law School, can not expect to do successful work of the quantity and quality now expected of him in the best American law schools."<sup>91</sup> The threatened result was that only those affluent enough to live without income would be able to take advantage of state-subsidized legal education. In fact, many students may have forsaken the pursuit of law because of the expense involved. Others, despite the rigors of the course, continued to both work and study. Vance attempted to improve their situation by developing the law school's first financial aid plan. As proposed by the faculty to the alumni in 1912, the plan called for a loan fund of \$10,000 to be raised by the alumni and offered "on a commercial basis" to second and third year students. It was hoped that the fund would aid about forty students each year,<sup>92</sup> "so that they would not be required to handicap themselves, often to the point of failure, by outside work."<sup>93</sup>

Unfortunately, it was difficult to bring the plan to fruition. Not until 1923 was a Law School Alumni Fund in the amount of \$1390 turned over to the faculty.<sup>94</sup> In view of the delay and the small size of the fund, the school was forced to adopt a different approach to the problem of working students by encouraging them to go to school only part-time and extending their courses over four years.<sup>95</sup> In this way, an accommodation was made between the desire to offer state-supported legal education to less affluent members of society and the need to maintain high academic expectations for all students.

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89. *Id.* at 132.

90. Vance, *supra* note 84, at 65.

91. Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT: 1913-1914, at 95 (1915).

92. See *Law Alumni Committee*, MINN. ALUMNI WEEKLY, November 18, 1912, at 8.

93. Vance, *supra* note 91, at 95.

94. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1923-1924, at 122 (1925).

95. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1916-1917, at 12 (1916).

## E. CURRICULUM

An important part of Dean Vance's program to improve the law school was his effort to expand and revise the curriculum. The extension of the required course to 1200 lecture hours and the transition to the casebook method were parts of this project. So, too, was the announcement that subjects would no longer be examined one at a time, but would be studied together throughout the semester, with exams in each subject at the end.<sup>96</sup> In addition, Vance discontinued the school's postgraduate offerings, "as we are not equipped at the present time to justify our giving [such a] degree."<sup>97</sup> But more important than these changes were three other changes in the curricular offerings: the development of a program of electives, the institution of a course in practice, and the creation of a clinical component to legal education.

Until the 1912-1913 academic year, the curriculum of the law school was absolutely fixed, allowing no electives in any of the three years of study.<sup>98</sup> Since specialization had become increasingly common in the practice of law, however, it seemed reasonable to Vance to allow students to select courses of particular interest, at least in their third year. Thus, while in the 1912-1913 academic year a senior had to take nine required courses, totaling twelve hours a week each semester, and could elect one or two additional courses, in the 1917-1918 academic year a senior had to take only one required course each semester, consuming five and four hours a week, and had fifteen courses from which to elect.<sup>99</sup> Among the fifteen options, however, only one course—administrative law—was new to the school.<sup>100</sup>

Although only one new class was added during the Vance years, a significant curriculum development breathed new life into the old moot court class. Recognizing "that the greatest weakness in the modern law school is to be found in its practice courses,"<sup>101</sup> Vance determined that a solution must be devised. Eastern schools might be able to afford the luxury of deleting practice from their curricula,

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96. See *Minnesota Daily*, Sept. 21, 1911, at 1, col. 3.

97. *Id.*

98. Vance, *supra* note 84, at 64.

99. Compare UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1912-1913, at 14-15 (1912), with UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1917-1918, at 14-16 (1917).

100. Four courses listed in the 1917-1918 *Bulletin* were not in the 1913-1914 *Bulletin*, but three of these—private corporations, municipal corporations, and mortgages—had been offered previously. See, e.g., UNIVERSITY OF MINNESOTA BULLETIN: College of Law, 1910-1911, at 16 (1910).

101. Vance, *supra* note 84, at 67.

but Vance reasoned that

inasmuch as many of our graduates must necessarily start into practice on their own account, instead of going into some well-established office as is usually the case with a graduate of an eastern law school, it becomes necessary for us to attempt to teach practice and to prepare the student as best we can to enter successfully upon the actual practice of law.<sup>102</sup>

In short, Minnesota's future lawyers required training not only in the theory of the law, but also in its practice.

To accomplish the task of reinvigorating the practice course, Vance turned to Professor Morgan, whose experience at the Minnesota bar made him particularly fit for the job. Morgan's first step was to remake the moot court in the image of the Minnesota judicial system, with divisions corresponding to the justice court, the district court, and the supreme court. Each student was assigned cases in each division and required to draw the pleadings, try the case, and prepare and argue the appeal.<sup>103</sup> The cases assigned were sometimes hypotheticals, sometimes reenactments. The emphasis was on realism, and the trials occasionally involved almost as much drama and discussion as the original litigation. Such was the "retrial of the most famous case in the history of Anglo-Saxon criminal law . . . State vs. Palmerly."<sup>104</sup> The case, conducted with the assistance of the medical school, was a prosecution of a doctor for murder by poison,<sup>105</sup> and it was covered by the Minneapolis,<sup>106</sup> St. Paul,<sup>107</sup> and University<sup>108</sup> newspapers with daily reports and, in some issues, photographs and sketches.

Dean Vance recognized, however, that although the practice court cases seemed real, they did not involve real clients and real problems. The students learned trial practice, but they needed to acquire additional clinical experience. An opportunity was provided by the Legal Aid Society of Minneapolis, a branch of the Associated Charities of the City of Minneapolis. The Society had been offering

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102. *Id.*

103. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1914-1915, at 14 (1914).

104. Minnesota Daily, May 11, 1915, at 1, col. 3. The case was based on *The Queen v. Palmer*, 119 Eng. Rep. 762 (Q.B. 1856). See generally *The Times* (London), May 26, 1856, at 10, col. 3; *id.*, May 15, 1856, at 7, col. 6. For the purposes of the practice class, however, the time and place of the case were changed to the year 1915 in Hennepin County, Minnesota.

105. The original Palmer, after a sensationalistic trial, was found guilty of murder and executed. See *The Queen v. Palmer*, 119 Eng. Rep. 762, 764 (Q.B. 1856). The all-student practice court jury also found the defendant guilty, and he was sentenced to life imprisonment. See Minneapolis Sunday Tribune, May 16, 1915, at 8, col. 5.

106. See, e.g., Minneapolis Tribune, May 12, 1915, at 12, col. 1.

107. See, e.g., St. Paul Pioneer Press, May 11, 1915, at 14, col. 1.

108. See, e.g., Minnesota Daily, May 11, 1915, at 1, col. 3.

legal aid to indigents for some time, but without a regular office or staff. Vance proposed a plan that would assist both the Society and the school by helping the Society establish a regular office with a full-time attorney who also would be a member of the law school faculty. In the latter capacity, the attorney would run the Society as a legal clinic connected with the school's practice course. Each third-year student would be required to work at the clinic for three consecutive afternoons, five times throughout the year, thereby gaining exposure to actual casework and lessons in legal ethics and professional responsibilities.<sup>109</sup>

The clinic secured the approval of the Board of Regents and began operation in 1913. During its first year, it processed nearly 1800 cases;<sup>110</sup> two years later the number was 3000.<sup>111</sup> Although involving "small amounts and usually unimportant matters,"<sup>112</sup> these cases nonetheless provided a wider range of experience than was available in a regular law office. Vance reported enthusiastically to the President in 1914 that "[t]his 'legal clinic,' which, so far as my knowledge extends, has known its first and most complete development in connection with the work of this Law School, is exciting wide-spread interest throughout the country."<sup>113</sup>

Complemented by the legal clinic and succeeding greatly on its own, the practice course subsumed the moot court class and was expanded. It grew from one hour a week per semester in 1912-1913 to three hours a week during the first semester and two hours a week during the second semester in 1917-1918.<sup>114</sup> This expansion found the University of Minnesota devoting more time to trial practice than most other law schools in the country. It was justified, according to Vance, by the successes Professor Morgan was realizing in the class. Morgan, wrote the Dean, "deserves the highest praise for the indefatigable industry and high intelligence which has characterized his efforts to solve this difficult problem."<sup>115</sup>

Encouraged by this praise and the enthusiasm of his students, Morgan continued his reform. In the 1916-1917 academic year, the law school's program in legal writing and practice developed into a

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109. See Legal Clinic of Law School of University of Minnesota (n.d.) (unpublished report on file in Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

110. See Vance, *supra* note 91, at 92.

111. See Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1915-1916, at 73 (1917).

112. *Id.*

113. Vance, *supra* note 87, at 66.

114. Compare UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1912-1913, at 14 (1912), with UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1917-1918, at 14 (1917).

115. Vance, *supra* note 91, at 92.

form not dissimilar from that of the present program. First-year students, "in order to acquire facility in looking up authorities and in legal reasoning,"<sup>116</sup> were required to brief and argue assigned issues. Second-year students prepared pleadings and other papers,<sup>117</sup> and third-year students, "in addition to classroom instruction in practice, engaged in the exercises of the practice court."<sup>118</sup> Though criticism remains (or has returned) that legal education is not producing lawyers who are truly competent to try cases,<sup>119</sup> the graduates of the program that Morgan designed had a solid beginning toward mastery of the intricate art of litigating.

#### F. ACADEMIC ASCENDANCY

The Minnesota Law School was changed indelibly by the deanship of William Reynolds Vance. His recruitment of highly capable faculty, his emphasis on student professionalism, and his modernization of the curriculum made the law school of 1917 almost unrecognizable as a descendant of the law school of 1911. The typical law student in 1917 was not only more studious and industrious than his counterpart in 1911, but also had a remarkably different attitude toward both the classroom and the legal profession. Vance sought to produce lawyers who were more than highly educated and technically competent; they also had to be persons of high moral character, imbued with a sense of professional responsibility to the law and the state. That goal, shared by the new faculty, almost instantaneously permeated the concourses of the law school and became the students' goal as well. This fact is best demonstrated by two other developments of the Vance era—the establishment of student government through the Law School Council and the honor code, and the founding of the *Minnesota Law Review*.

From the beginning, Dean Vance had encouraged student self-government, and in the fall of 1912, he created the Law School Council. At a time when the great-hearted paternalism of men like President Northrop and Dean Pattee still controlled the way in which faculty and students viewed their relationship, it must have seemed a radical idea. Composed of three faculty members and three students, the Council had "control of all matters of student conduct and discipline in the Law School and . . . also act[ed] as an advisory body in the arranging of schedules, and in making changes in the

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116. UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1916-1917, at 16 (1916).

117. See *id.*

118. *Id.*

119. See, e.g., *Inept Lawyers Are the Bane of the Law*, N.Y. Times, Dec. 4, 1977, § 4, at 11, col. 1.

curriculum."<sup>120</sup> Vance immediately put a proposal for an honor system before the Council, and it was resolved that, as an experiment, the next first-year exam would conclude with a signed pledge that the student had neither given nor received assistance in the exam.<sup>121</sup>

Though the experiment reportedly was successful,<sup>122</sup> the popularity of the honor system was far from assured. More persuasion was necessary. Once Dean Vance decided that a particular goal was worthwhile, he was not easily diverted. Thus, little over a year later, with the honor system adopted in two of the three classes in the law school, Vance took the opportunity of a chapel address to present his case for an honor system to the entire University.<sup>123</sup> In one question, he capsulized his argument:

If it is the function of the teacher to compel the student to do what he does not want to do, while the principal ambition of the student is to pass through his college course and carry away a bit of beriboned sheep-skin with a minimum of intellectual effort and a maximum of amusement at the expense of the faculty, how can it be possible that there should exist between teacher and student that relation of mutual confidence, self-respect and comradeship which is so essential to the successful carrying on of the great enterprise of education?<sup>124</sup>

After elaborating on the failure of the current system to establish an appropriate code of conduct,<sup>125</sup> Vance turned to his recommended solution, the development of an honor system, more accurately described as a system of self-government and self-respect. "What does it mean?" he asked; "[m]erely this: that the faculty turn over to the students the responsibility for governing their own conduct in the class-room and out of it."<sup>126</sup> Implicit in Vance's willingness to turn over this responsibility to the students was his belief that the stu-

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120. Minnesota Daily, Nov. 6, 1912, at 1, col. 2. Professors Paige and Fletcher joined the Dean and student representatives J.B. Faegre (President), L.K. Ostrander, and B.W. Palmer (Secretary) on the Council. *See id.*

121. *See id.*

122. *See May Adopt Honor System*, MINN. ALUMNI WEEKLY, November 18, 1912, at 12.

123. *See Vance, The Meaning of the Honor System*, MINN. ALUMNI WEEKLY, January 19, 1914, at 6.

124. *Id.* at 7.

125. Along with the problems of cheating and stealing, Vance, reflecting the morals of the time, noted that at student dances,

some of the young men and young women have so little of that self-restraint which should characterize the educated man, and so little of that respect which all self-respecting people should feel for the opinion of the community in which they dwell, as to engage in such dancing as brings reproach upon the University as well as upon themselves.

*Id.*

126. *Id.* at 8.



dents were beyond paternalism—that they were men and women of the ethical maturity he sought for his profession.

The law students, responding to his proposals, showed their appreciation for Vance's respect. At least one member of the University faculty, however, exhibited open animosity toward the proposal in a review of the issue of the *Minnesota Alumni Weekly* in which the speech appeared. According to Mr. Skinner of the Rhetoric Department, "[i]t can be safely asserted that if there were space in this review, the whole Honor System, with Dean Vance as champion, would not have a metaphorical leg to stand on."<sup>127</sup> That the fundamental difference between these two men was their respect for the student may be easily inferred from Skinner's statement that "the Honor System is credited with the ability to bring about right relationships between instructors and students; as though forsooth, the putting on of sheeps' clothing could transform jackals."<sup>128</sup> No "jackals" (a term often used to describe precisely the kind of lawyer Vance abhorred) were welcome in Dean Vance's school, and no students were treated as such.

The students also reflected the new atmosphere that Vance had created by their work on the *Minnesota Law Review*. In November 1912, Vance indicated that a law review should be published as soon as the faculty could be "increased sufficiently to make it possible."<sup>129</sup> Just over four years later, in January 1917, the first issue of volume one of the *Minnesota Law Review* was published. In a foreword to this issue, the Editor-in-Chief, Professor Henry J. Fletcher, enumerated the *Review's* objectives:

While the *Minnesota Law Review* will be published in the Northwest and for Northwestern readers chiefly, its design is not provincial or local. The harmonious development of the law as a whole will be its major theme. . . . Nevertheless, it is recognized that each of the great sections of the country has its own peculiar legal problems, each state its own more special problems. It should be the duty of a state university to assist in the solution of these questions, in the legislature, in the courts, and in the forum of public opinion, quite as much as to render assistance to the municipalities of the state in their engineering plans, in promoting the public health, or to the farmers of the state in promoting agriculture. In this work the law review should in time become a recognized factor.<sup>130</sup>

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127. *Mr. Skinner of Rhetoric Department Reviews This Month's Issue of "Mag,"* *Minnesota Daily*, Mar. 20, 1914, at 3, col. 2.

128. *Id.*

129. W. Vance, Statement of the Policy of the Law School of the University of Minnesota 8 (Nov. 12, 1912) (unpublished report on file in Law School File, James Gray Papers, University of Minnesota Archives, Minneapolis, Minnesota).

130. Fletcher, *Foreword*, 1 MINN. L. REV. 63, 65 (1917).

Professor Fletcher also concisely stated the *Review's* goals: "A well conducted law review in which faculty and students collaborate ought to do something to develop the spirit of statesmanship as distinguished from a dry professionalism. It ought at the same time to contribute a little to the systematic growth of the whole law."<sup>131</sup>

Fortunately, the *Law Review* germinated in a time when the soils of the legal community were rich with support and nourishment. The Minnesota State Bar Association, organized in 1901, was by the middle of the second decade of the century beginning to see itself as more than a social organization. Its membership had grown to include over half of the state's lawyers. Among them, according to one of the Association's ex-presidents, were "most of the able, experienced and influential practitioners in the State."<sup>132</sup> The State Bar Association was helpful to the *Minnesota Law Review* by providing financial support. Its members, first individually and then, five years later, as an organization,<sup>133</sup> provided the bulk of the *Review's* subscriptions. In addition, more than fifty members of the alumni and other state lawyers backed the periodical in its infancy by guaranteeing its finances for the first three years. Its unprecedented self-sufficiency during its first several decades, however, made this guarantee unnecessary.

Vance established self-sufficiency as a goal for the *Review* in 1916, before it even began publication, noting that "[i]f it cannot support itself, it will not accomplish the purpose we have in view in establishing it."<sup>134</sup> He entrusted the *Review's* financial success to Professor Paige, and through Paige's efforts over the course of 22 years, success was achieved. Years later, Dean Vance's successor, Everett Fraser, could point with pride to Paige's accomplishment in building a surplus while the Wisconsin and Iowa law reviews required heavy subsidies.<sup>135</sup> In 1931, then retired Professor Fletcher wrote of Paige that his relation "to the *Review* as its business manager has been absolutely unique. I don't believe another man can be found who would do for it what he has done. He held the nursing bottle for its infant lips and also milked the cow even when she kicked hard."<sup>136</sup>

The *Law Review's* successes were not merely financial. Many of

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131. *Id.* at 64.

132. Burr, *The Minnesota State Bar Association*, 1 MINN. L. REV. 98, 98 (1917).

133. The *Law Review* became the official organ of the Minnesota State Bar Association in 1922, see 7 MINN. L. REV. 40 (1922), and continued to be so until 1954.

134. Letter from Dean Vance to George E. Vincent (Oct. 23, 1916) (on file in President's Papers 1912-1916, University of Minnesota Archives, Minneapolis, Minnesota).

135. Fraser, *supra* note 88, at 136.

136. Letter from Henry J. Fletcher to Dean Fraser (Oct. 27, 1931) (on file in Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

its leading articles came from the pens of the school's faculty and thereby promoted both the faculty's scholarly output and its reputation. The *Review* also rapidly became "one of the most valuable compendiums of the law of the state. But even more valuable," according to Dean Fraser, was "the scholarly interest in the law which it arouses in this group of excellent students. This work, under the direction of the editor, Professor Henry J. Fletcher, is one of the best courses in research that could be devised."<sup>137</sup>

The 1916-1917 academic year was the pinnacle of the Vance administration. A faculty of national stature, a student body beginning to adopt a new view of its academic and professional responsibilities, a legal clinic in which learning and serving were integrated, and a new periodical striving at the same time to improve the law and prospective lawyers—all these developments were the results of Vance's creative vision of the school he sought to build.

As if to complete this picture of growth, in that year the law school played an important role in legislative reform in Minnesota. Through the operation of the legal clinic, Dean Vance and others had observed a deficiency in the administration of justice. There was no quick and informal means of resolving small disputes in Minnesota's court system; there were no small claims or conciliation courts. Consequently, delay and expense sometimes produced a denial of justice to the poor. Moreover, the average amount involved in each of the 3000 cases handled by the Minneapolis Legal Aid Bureau was less than ten dollars,<sup>138</sup> and common sense alone dictated that something short of a full trial was needed to resolve such disputes.

Dean Vance attacked these problems with characteristic dispatch and thoroughness. From the Minnesota State Bar Association, through its Committee on Jurisprudence and Law Reform, of which he was a member, he received unanimous support for legislation to create a conciliation court.<sup>139</sup> From the *Law Review*, he received a forum for his argument in support of the bill.<sup>140</sup> From the legislature he received, most gratifyingly, the desired result—passage of the legislation in April 1917.<sup>141</sup>

The success of this reform measure was to Vance an example of the improvements that could be expected when lawyers discharged their professional responsibility through institutions created for that purpose. Vance's success in the law school, combined with his suc-

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137. Fraser, *supra* note 88, at 136.

138. See Vance, *A Proposed Court of Conciliation*, 1 MINN. L. REV. 107, 114 (1917).

139. See *id.*

140. *Id.*

141. Act of Apr. 17, 1917, ch. 263, 1917 Minn. Laws 377 (codified at MINN. STAT. §§ 491.01-.08 (1976)).

cesses in the community at large, did much to create for lawyers an opportunity to improve their professional reputation by improving the system of justice that they administered. As father of the Minnesota Conciliation Court, Vance demonstrated that he was the Minnesota disciple of a professional vision that made possible the achievement of ordered legal reform.

#### G. THE FALL

The 1916-1917 school year was, indeed, a pinnacle year. But within four years, the combined influence of World War I and a voracious faculty raid took much of the brilliance from the structure Vance had built. For some time, Yale had been attempting to hire away some of Minnesota's faculty.<sup>142</sup> Within the next four years, it succeeded with the four best—Morgan, Lorenzen, Thurston, and finally Vance. What Yale could not do, the War did, distracting both students and professors, cutting enrollment to 74 students by the spring of 1918.

The first blow came with the departure of both Morgan and Lorenzen for Yale. By 1917, it had become more and more difficult for a publicly supported institution such as the University of Minnesota to compete with the affluence of a privately endowed school. Thus, when Yale offered Morgan and Lorenzen \$6000 a year for six hours of classroom work a week,<sup>143</sup> which was probably \$1000 a year more than Minnesota paid<sup>144</sup> for at least two more classroom hours a week,<sup>145</sup> the inducement was too much. One story is that Lorenzen hesitated only because Edmund Morgan had already accepted the Yale offer. James Gray, in his history of the University, reports this response to a colleague's inquiry of Lorenzen concerning his New Haven plans:

Lorenzen sighed deeply. "I don't know," he said. "I think about it all the time and I still can't decide. I've begun even to dream about it. Last night I dreamed that I was in New Haven and everything was wonderful. Students filled my classes. They read all my cases. They read whole series of cases for me without complaining. I woke up. I was happy. I whistled. I sang. Then, while I was shaving, the truth came over me. I said out loud, 'But, damn it, Eddie will be there!'"<sup>146</sup>

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142. See *Minnesota Daily*, Mar. 13, 1914, at 4, col. 5; *id.*, Mar. 5, 1914, at 1, col. 3 (reports of offers made by Yale to Professor Thurston).

143. See Vance Letter (Jan. 26, 1917), *supra* note 82.

144. See note 82 *supra*.

145. See *UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1916-1917*, at 12-16 (1916) (indicating that in his last year at Minnesota, Lorenzen taught eight hours of classes the first semester and nine the second).

146. J. GRAY, *supra* note 5, at 165.

Nevertheless, Lorenzen accepted Yale's offer.

There was little time for the effect of these resignations to be felt before the law school and the state were jolted by America's entry into World War I in April 1917. Faculty and students alike flocked to the military. Professor Thurston moved to Washington, D.C., and the Office of the Judge Advocate General. A year later, Dean Vance departed for the duration of the war to become counsel for the War Risk Insurance Bureau, and Professor Paige again became acting dean. At the same time, the student body was reduced "almost to a vanishing point," with only seventeen civilian students enrolled in the fall of 1918.<sup>147</sup> The Students' Army Training Corps brought other students into the school for a special course in military law but not for the regular course.<sup>148</sup> Regular instruction continued, as did the *Law Review*, but the school's program had been crippled.

When the War ended in November 1918, the student exodus reversed itself, but the faculty exodus did not. Enrollment for the 1919-1920 academic year jumped to 266, with indications that a further increase was on the way.<sup>149</sup> But the attrition in the faculty continued. Lecturer W.M. Jerome died in 1918. Yale attracted Thurston in 1919. Replacements were sought and several were hired, but the influx of new students left the faculty heavily overburdened.

Although struggling with the problems of a reduced faculty and increased student enrollment, the school still had Dean Vance, and his knowledge and ability reduced the effects of the problems encountered. He hired replacement professors who had as much promise and potential as the men they succeeded, and his reputation in the community and in the University was undiminished. With Vance still in charge, losses were minimized. But the crowning blow in the school's tumultuous fall from its 1916 pinnacle was yet to come.

When Vance returned from the War Risk Insurance Bureau in September 1919, he did so despite an attractive offer of \$8000 a year to remain.<sup>150</sup> Vance's salary at Minnesota was \$6000 a year, as it had been since he began at Minnesota. Faced with competition, the Regents increased his salary by \$500.<sup>151</sup> A few months later, Professor

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147. Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1918-1919, at 141 (1920).

148. See *id.*

149. See Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1919-1920, at 144 (1920).

150. See Letter from Marion L. Burton to Regent Snyder (May 13, 1919) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

151. See Letter from Regent Butler to Marion L. Burton (Oct. 10, 1919) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

Henry J. Fletcher quietly proposed Dean Vance to the Regents as a candidate for University President, to succeed President Marion L. Burton, who had resigned. Regent Snyder, however, felt that Vance was "ideal where he is" and argued against "spoil[ing] so good a man for the position he holds by advancing him to a position where he will lose luster."<sup>152</sup> Six months later, "ideal" though he was, Dean Vance succumbed to an offer from Yale of \$10,000 a year<sup>153</sup> and reduced administrative and classroom obligations. The University of Minnesota, whether through overconfidence or undercommitment, had allowed a golden era in the history of the law school to come to an end.

In retrospect, however, though the loss of Dean Vance was severely felt, much that he accomplished remained. Some innovations, such as the legal clinic, slowly withered away only to revive during the modern era. But the honor system, the Law School Council, the *Law Review*, the quality law library, and the attitude of scholarship and community service are institutions and values that have survived the succeeding decades. Perhaps Vance's most important legacy was his idea that Minnesota was no longer a prairie law school—that it should aspire to the same educational standards and objectives as the most highly respected and successful law schools in the country, and that the quality of the faculty, students, and accomplishments of the Minnesota Law School should be nothing less than the best. Under his leadership, the school overcame a reputation for academic mediocrity and built a reputation for innovation and excellence. The Vance years—years of ascendancy—left the school with an enduring aspiration for excellence that subsequent administrations have never abandoned.

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152. Letter from Regent Snyder to Regent Butler (Jan. 10, 1920) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

153. Telegram from President Burton to Regent Snyder (Apr. 6, 1920) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

